

MEMORANDUM OF UNDERSTANDING
BETWEEN THE UNIVERSITY OF LOUISVILLE
AND
THE UNIVERSITY OF LOUISVILLE FOUNDATION

THIS AGREEMENT ("Agreement") entered into as of this 1st day of July, 2017, by and between the University of Louisville and its Board of Trustees (hereinafter, respectively, the "University" and the "University's Board of Trustees") and the University of Louisville Foundation, Inc. and its Board of Directors, (hereinafter, respectively, the "Foundation" and the "Foundation's Board of Directors").

The University and the Foundation shall work as partners to strengthen the University through activities that support the mission and priorities of the University.

The Foundation is a Kentucky nonprofit corporation that has been recognized by the Internal Revenue Service as a tax-exempt charity under Section 501(c)(3) of the Internal Revenue Code, as amended (the "Code"), and is primarily responsible for stewarding donations received for the University's overall enhancement in accordance with donor intent and its fiduciary responsibilities. Although the Foundation is a separate legal entity from the University (and not a public agency) and consistent with its stated purposes in its Articles of Incorporation, the Foundation exists to promote the interest and welfare of the University and provide it with a margin of excellence by providing the maximum level of sustainable financial support.

The Foundation receives, invests, encourages, manages, and administers private gifts and bequests donated for the benefit of the University and directs them to specific areas or projects within the University when designated by the donor. The Foundation acts in a fiduciary capacity, distributing money as required by the terms of the gift and consistent with the donor's intent. Unrestricted gifts are administered by the Foundation in consultation with the University President or his designee to provide the greatest flexibility in day-to-day operations, to fund the University's strategic plan, to meet unanticipated University needs, and to fund University approved special projects. The Foundation acts as custodian for endowed funds and serves in other fiduciary capacities when gifts are made through bequests and other planned giving arrangements. The University designates the Foundation as the repository of private gifts made in support of the University unless otherwise specified by the donor.

In consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

I. Foundation Name, Seal and Logotype

A. During this Agreement's term only, and consistent with its mission to help advance the plans and objectives of the University, the Foundation is granted a royalty-free, non-exclusive, non-transferable license to use the name, "University of Louisville", the name "U of L", and the University of Louisville cardinal bird (registration number 2007784) so long as this Agreement is in effect (the "University Marks"). The Foundation will operate under its own seal and logotype, which, during the term of this Agreement, shall include the

Marks or any combination thereof.

- B. All Foundation use of or materials containing the University Marks shall be well suited in accordance with the purposes of this Agreement and shall be of a high quality that does not derogate from or adversely affect the University Marks or the goodwill and reputation associated therewith or with the University. The Foundation will conform its uses to quality standards approved by the University in its reasonable discretion, which may be changed by the University periodically with written notice to the Foundation and which shall, in no event, be lower than the standards the Foundation applies to maintaining its own trademarks. The Foundation agrees that the University Marks are the University's exclusive property, have acquired secondary meaning and that all related rights and goodwill in the University Marks shall inure solely to the University's benefit. The Foundation shall not acquire any rights or interest in the University's Marks, nor shall the Foundation challenge, attack or contest the ownership or validity of the University's rights in the University Marks.

II. University Governance

- A. The University's Board of Trustees is responsible for overseeing the mission, leadership, operations and performance of the University.
- B. The University's Board of Trustees is responsible for setting priorities and long-term plans for the University.
- C. The University's Board of Trustees, through its designees, is responsible for the employment and compensation of all University employees and for the appointment, compensation, evaluation, and removal of the University President.

III. The Foundation's Relationship to the University

- A. Unlike the University, the Foundation is not an agency of the Commonwealth of Kentucky. The Foundation is a Kentucky nonprofit corporation that exists separate and apart from the University and is not subject to the University's control, but which exists to further the University's charitable and educational purposes. The Foundation is a tax-exempt charity pursuant to Section 501(c)(3) of the Code. The purposes of the Foundation shall be as set forth in its Articles of Incorporation, as amended effective July 14, 1992.
- B. The Foundation's Board of Directors is responsible for overseeing the Foundation's operations, including control and management of its assets and prudent management of all gifts made for the benefit of the University, whether endowed or current use gifts, consistent with donor intent. This oversight is governed by a comprehensive set of bylaws and articles of incorporation that clearly address the board's fiduciary responsibilities, including expectations of individual board members based on ethical guidelines and policies.
- C. The Foundation's investment and spending policies shall be with the purpose of ensuring that the corpus of gifts made to the endowment for the benefit of the University are maintained in perpetuity and not invaded, except as permitted by law and which do not contradict donor intent. Current use gifts shall be made available to the University for its

use when requested by the University President (or authorized designee), consistent with donor intent.

- D. The Foundation shall establish, maintain and enforce policies to identify and manage potential conflicts of interest among its board members and staff.
- E. The Foundation is responsible for employing, compensating, and evaluating all of its employees, including the Foundation Chief Executive; provided that the Trustee Foundation Board Members (defined below) and the University President shall be invited to serve on any personnel committee that hires, reviews, sets compensation for or makes decisions on the removal of the Foundation Chief Executive.
- F. The Foundation will use its best efforts to assure that the activities of the Foundation align with the mission and goals of the University and meet applicable accreditation standards. The University will use its best efforts to notify the Foundation of applicable accreditation standards.
- G. The funding transferred from the Foundation to the University may be used by the University to support its annual budget, as approved by the University's Board of Trustees, including support for endowed professorships. Without the University's Board of Trustees' approval, no money transferred to the University shall be used for University employee compensation except in full compliance with the Financial Transactions Policy passed by the University's Board of Trustees on March 26, 2017 (the "Spending Policy"), as amended from time to time. The Foundation will not pay any salary or non-salary compensation to a University employee or an employee of any other University affiliate for service as a University employee without the prior request of the University's Board of Trustees and the approval of the Foundation's Board of Directors.

IV. The University's Relationship to the Foundation

- A. The University President is responsible for communicating University priorities and long-term plans, as approved by the University's Board of Trustees, to the Foundation.
- B. The University President controls the University's fund-raising activities. The University President and campus leadership will work, in conjunction with the Foundation, to identify, cultivate, and solicit prospects for private gifts.
- C. The University President shall be an *ex-officio*, voting member of the Foundation's Board of Directors.
- D. Effective July 1, 2018, at the request of the Chair of the University's Board of Trustees, at least five (5) members of the University's Board of Trustees shall serve as voting members of the Foundation's Board of Directors (the "Trustee Foundation Board Members"). The University's Board of Trustees expresses its desire that, over time, as vacancies occur on the Foundation Board, the University President (serving in an *ex officio* capacity on the Foundation's Board) together with the Trustee Foundation Board Members should collectively comprise more than 40% but less than 50% of the membership of the Foundation's Board of Directors.

- E. Effective September 29, 2017, the Chair of the Foundation's Board of Directors and the Chair of its Nominating Committee always shall be a member of the University's Board of Trustees.
- F. The Foundation Chief Executive shall be invited on a regular basis to meetings of the University President's Executive team.
- G. The Foundation Chief Executive or his or her designee shall be included as an *ex-officio* member of any University-wide strategic or facilities planning committee.
- H. The University, at its option, may contract with the Foundation at fair market value rates for special services like grounds maintenance or advertising. The services, if any, and compensation amount will be negotiated on an annual basis by April 30th of the preceding fiscal year. The University agrees to provide the Foundation with access, at standard internal University rates, to the University's enterprise and identity management systems, including access to University email and Ulink services and storage space on the University's shared drive or an equivalent successor. To the extent the Foundation asks the University to provide customized functionality for the Foundation or requests that University personnel provide significant support for the Foundation's e-discovery obligations, the University and Foundation will timely negotiate reasonable compensation rates for those services. The Foundation agrees that it will comply with the University's policies and procedures related to access to and use of University email and Ulink services and shared drive storage space, including University policies and procedures related to data security. The University will provide the Foundation with a shared drive exclusively for the use of the Foundation. The University will provide that shared drive with the same level of security it provides to its own shared drives and agrees that it will not access information stored on that shared drive or other information that the University clearly knows is Foundation information without the express written permission of the Foundation, except as part of normal maintenance or desktop support operations.
- I. The University's Chief Financial Officer shall serve, *ex-officio*, as a voting member of the Foundation's Finance Committee.
- J. To ensure effective achievement of the items in this Agreement, the University and Foundation officers and representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities. The University and the Foundation will review and, if necessary, amend this Agreement at least every two years, but at a minimum after either institution amends its bylaws. This Agreement may be amended only by a written document signed by both parties and approved by the University's Board of Trustees and the Foundation's Board of Directors.

V. Foundation Responsibilities

A. Fundraising and Stewardship

1. The Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies and will make the University aware of any proposed changes to such policies.
2. The Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved by the Foundation's Board of Directors and the

governmental agency and only after consultation with the University.

3. Other than those records created and maintained by the University's Office of Advancement, the Foundation shall be responsible for, and custodian of donor records related to the gifts received by the Foundation for the University's benefit and shall make those records available to the University upon reasonable request.
4. The Foundation may serve as an instrument for entrepreneurial activities for the University and engage in such activities as purchasing, developing, or managing real estate for multiple purposes, including but not limited to University expansion, student housing, or office building and research facilities. It may also hold licensing agreements and other forms of donated intellectual property, borrow or guarantee debt or engage in other activities to further the purpose of the University. The Foundation may use donor gifts for the purposes described in this paragraph V.A.4 unless expressly prohibited.

B. Asset Management

1. The Foundation's investment strategy shall be to protect the corpus of endowment gifts, in perpetuity, and to achieve investment returns sufficient to sustain reasonable spending necessary to help support the University's academic mission and pursuits. While it is recognized that investment return is market dependent, the Foundation's goal is to prudently maximize returns, net of reasonable expenses and fees and inflation, to provide a reliable annual allocation to the University at the maximum level of sustainable support. The Foundation's goal shall be to equal or exceed the average three, five, and ten-year returns (net of fees) for Public Colleges, Universities, or Systems, as reported by the National Association of College and University Business Officers or a comparable benchmark with similar total assets.
2. The Foundation agrees to provide the University with timely information about investment performance and the current market value of endowments, as requested to allow the University to provide donors with this information.
3. The Foundation will establish prudent asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws, including the Kentucky Principal and Income Act (KRS 386.450 to 386.504) and the Kentucky Uniform Prudent Management of Institutional Funds Act (KRS 273.600 to 273.645).
4. The Foundation will receive, hold, manage, invest, and disperse contributions of cash, securities, patents, copyrights, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments. The Foundation will maintain separate accounts for (a) endowment funds, (b) current use gifts, and (c) operating cash.
5. The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and will provide the University with a copy of the annual audited financial statements, including management letters and responses to management letters within 30 days of receipt or provision. Within 90 days of the issuance of an audit report with audit findings, the

Foundation shall demonstrate to the University that satisfactory progress has been made to implement a corrective action plan. If the University recommends that specific actions be included in the corrective action plan, the Foundation Chief Executive shall promptly communicate the University's recommendations to the Foundation's independent accounting firm and the Foundation's Board of Directors for their consideration.

6. At the time it requests the transfer of funds, the University will provide the Foundation with appropriate documentation establishing that the University is adhering to terms, conditions or limitations imposed by the donor on the gift. The Foundation and the University will work together to develop a set of forms and procedures that implement this obligation in an efficient and effective manner.

C. Transfer of Funds

1. The Foundation is the primary depository of private gifts made for the University's benefit. It will transfer funds from endowment earnings to the designated entity within the University in compliance with applicable laws, University and Foundation policies, and gift agreements, and in keeping with its obligation to provide the University with the maximum level of sustainable support. Such transfers will occur on a timely basis based on an agreed schedule of disbursement payments.
2. In addition to the endowment support discussed in Section V.B.1 and V.C.1 above, the Foundation will, on a timely basis, provide current use funds to the University to support University initiatives and make disbursements on the University's behalf, subject to applicable gift agreements. The Foundation's disbursements on behalf of the University must be for reasonable business purposes that support the University, are consistent with donor intent, and do not conflict with the law. All requests for Foundation fund transfers to the University or disbursements on behalf of the University, in addition to the endowment support discussed in Section V.B.1 above, should be communicated to the Foundation by the University President, University Chief Financial Officer, applicable School Dean or University Chief Advancement Officer.
3. All transfers of funds from the Foundation to the University must be documented in writing or electronically in a form that has a retrievable transaction trail.
4. No later than March 1 of each year, the Foundation Chief Executive shall confer and discuss with the University's President and Chief Financial Officer about the Foundation's investment performance, its anticipated ability to meet its goal under Section V.B.1 for the next fiscal year, and the amount of current use funds anticipated to be available to the University during the next fiscal year over and above the endowment returns contemplated by Section V.B.1. Representatives of the Foundation shall be made available, as requested, and no less often than quarterly, to attend meetings of the University's Board of Trustees for the purpose of making a presentation and answering questions about the Foundation's performance.

D. Foundation Funding and Administration

1. The Foundation will maintain its tax-exempt status under Section 501(c)(3) of the Code

and carry on its work exclusively for the charitable and educational purposes of the University of Louisville.

2. The Foundation is responsible for establishing an annual operations and capital budget to underwrite the cost of Foundation programs, operations and services which will be provided to the University for review and comment prior to being presented for approval by the Foundation's Board of Directors. In setting its budget, the Foundation shall consider in good faith all suggestions offered by the University regarding the proposed budget and how the budget might be better aligned with the University's mission, goals, and objectives.
3. In establishing an annual operations and capital budget, the Foundation has the right to use a reasonable percentage of unrestricted funds to support its operations. In addition, the Foundation may use payments received from the University, whether direct (e.g., administrative fees) or in-kind, under the terms of any annual service contract with the University, as described in paragraph IV.H.
4. In establishing a financial plan, the Foundation will provide for necessary office space, computer and telephone systems, utilities, adequate personnel, office supplies, and other such services that may be necessary or required to fulfill its responsibilities and obligations.
5. The Foundation shall maintain copies of the plans, budgets, and donor records developed in connection with the performance of its obligations.
6. The Foundation will provide copies of its financial data and records to the University, upon request, within a reasonable period of time. The Foundation will also provide copies of its annual report and other information that may be publicly released.
7. The Foundation and University will share access to donor data and records in accordance with established University and Foundation policies and procedures and mindful of applicable laws.
8. The Foundation must have a confidential and anonymous mechanism to encourage individuals to report any inappropriateness within the Foundation's financial management and must prohibit punishment of or retaliation against any employee for reporting problems.
9. Officers and employees of the Foundation who have check-signing authority or who handle cash or negotiable instruments must be bonded in an amount determined to be reasonable by the Foundation's governing body, after consultation with the University.
10. The Foundation's Board of Directors, after consulting with the University's insurance and risk management personnel, shall evaluate the potential risks arising from the Foundation's operation and obtain commercially reasonable amounts of general liability and directors'/officers' insurance.
11. The Foundation must have a policy consistent with best practices governing retention and destruction of documents including electronic files. The Foundation and University's policies shall be generally consistent with respect to Foundation records

relating to funds held for the University's benefit or transactions or fund transfers involving the University.

VI. University Responsibilities

- A. The University shall ensure the development and regular sequenced communication of donor stewardship letters.
- B. The University shall ensure that any allocations from the Foundation are spent in accordance with donor intent.
- C. The University shall timely sign compliance documents from the Foundation attesting to its adherence with donor intent. At the request of to the University's Board of Trustees, the Foundation shall provide a written report affirming that this has occurred.
- D. The University shall deliver to the Foundation, the funds received from the Bucks for Brains program, to be held, managed, invested and administered by the Foundation in accordance with this Agreement.

VII. Terms of the Memorandum of Understanding

- A. Either party may terminate this Agreement, upon the affirmative vote of not less than 75% of the members of its governing body and 180 days prior written notice to the chief executive officer and Board Chair of the other party. The party initiating the Agreement's termination must act in good faith to schedule and participate in a meeting to resolve differences, which meeting shall include University and Foundation executives and both parties' Board Chairs (or their designees) within 30 days of the initial written notice of intention to terminate the Agreement. At such meeting, the parties shall use their best efforts to resolve all differences.
- B. If, after the meeting described in the preceding paragraph, differences remain, the parties shall mutually select a neutral mediator to facilitate a dispute resolution process. Both parties, as represented by their top executives and board chairs, shall participate in good faith in the mediation and use their respective best efforts to resolve all differences. If a neutral mediator has not been selected or the mediation is not successful within sixty days' after the meeting described in the paragraph VII.A, the parties shall continue to cooperate in good faith to resolve differences. On the date which is 90 days after the meeting described in paragraph VII.A, the parties' top executives and board chairs shall once again meet – including with the mediator if one has been selected. If, at the conclusion of that meeting the parties agree that a resolution is possible they shall agree on a path for achieving such resolution. If, however, at the conclusion of that meeting one or more of the parties do not believe a resolution is possible, the parties shall work together in good faith over the next 60 days to formulate a plan of termination, which plan shall govern their separation and their relationship after termination of this Agreement. If the parties have not agreed on a plan of termination within that 60 day period, then the Agreement shall terminate at the end of such 60 days.
- C. Notwithstanding the foregoing, either party may terminate this Agreement upon the affirmative vote of not less than 75% of its governing body in the event the other party

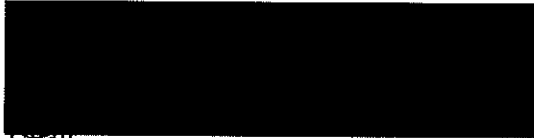
materially defaults in the performance of its obligations and fails to cure the default within a reasonable period (not less than 90 days) after receiving written notice of intention to terminate this Agreement (which notice shall describe the material default in reasonable detail).

- D. Notwithstanding the foregoing, both parties recognize that, whether this Agreement has been terminated or remains in full force and effect, the Foundation has a fiduciary duty to fulfill its responsibilities to donors under the terms of the gifts it has received to distribute and expend funds for the University's benefit. That obligation continues after the termination of this Agreement.
- E. The Foundation agrees to comply with all state and federal laws applicable to it and to maintain its tax-exempt status at all times. Consistent with provisions appearing in the Foundation's Articles of Incorporation, should the Foundation cease to exist or cease to be recognized under Section 501(c)(3) of the Code, the Foundation will transfer its assets and property to the University, or if the University is not then in existence or otherwise competent to receive them, to those entities provided for in Kentucky Revised Statutes Section 273.303 or its successor statute, in accordance with law and donor intent.
- F. The parties' obligations under paragraphs I, III.B, III.C, III.F, V.B, V.C, V.D.1, V.D.6, V.D.7, V.D.11, VII.D., and VII.E shall survive the termination of this Agreement.
- G. This Memorandum of Understanding supersedes and replaces all prior Agency Agreements between the University and the Foundation, including the Agency Agreements entered into in 1985, 1996, and 2001. Such Agency Agreements shall be void and of no further force and effect.
- H. This Memorandum of Understanding may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by email transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by email shall be deemed to be their original signatures for any purposes whatsoever.

[SIGNATURE PAGE FOLLOWS]

This Memorandum of Understanding, made as of this 1st day of July, 2017, between the University and the Foundation is intended to set forth policies and procedures that will contribute to the coordination and understanding of their mutual activities and responsibilities. It shall, subject to the provisions above, remain in effect until June 30, 2019 and shall automatically renew for additional two year terms unless modified by the parties.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized officers as of the day and date first above written.



Chair
Board of Trustees, University
Louisville

Date: 7/7/2017



Chair
Board of Directors, University of
Louisville Foundation

Date: 7/18/17



Interim President
University of Louisville

Date: 7/7/17



Interim Executive Director and COO
University of Louisville Foundation

Date: 7/10/17